

customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as described herein) so long as the broker is acting on an agency basis;

(f) No transactions by a Fund has involved or will involve purchases from or sales to Prudential (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than 5 percent of the total amount of Prudential Stock that is issued and outstanding at any time has been held or will be held, in the aggregate, by Index or Model-Driven Funds managed by Prudential;

(h) Prudential Stock has not constituted nor will constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of Prudential has authorized or will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein; and

(j) A fiduciary independent of Prudential will direct the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first-class mail to interested persons, including the appropriate fiduciaries of employee benefit plans currently invested in the Index and/or Model-Driven Funds that may acquire and hold Prudential Stock. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. All notices will be sent to interested persons within 30 days of the publication of the proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing are due within 60 days after the date of publication of the pendency notice in the **Federal Register**.

In addition, Prudential will provide, upon request, a copy of the proposed

exemption and, if granted, a copy of the final exemption to all ERISA-covered plans which invest in any Index or Model-Driven Fund containing Prudential Stock in their respective portfolios after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693-8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits,
Administration, U.S. Department of Labor.*
[FR Doc. 02-1367 Filed 1-17-02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D-11041]

Notice of Proposed Individual Exemption To Modify Prohibited Transaction Exemption 90-23 (PTE 90- 23); Prohibited Transaction Exemption 90-31 (PTE 90-31) and Prohibited Transaction Exemption 90-33 (PTE 90- 33) Involving J.P. Morgan Chase & Company and Its Affiliates (the Applicants) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to modify PTE 90-23; PTE 90-31; and PTE 90-33 (collectively, the Exemptions).

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual administrative exemption which, if granted, would amend: PTE 90-23 (55 FR 20545, May 17, 1990), an exemption which was granted to J.P. Morgan Securities, Inc.; PTE 90-31 (55 FR 23144, June 6, 1990), an exemption which was granted to Chase Manhattan Bank; and PTE 90-33 (55 FR 23151, June 6, 1990), an exemption which was granted to Chemical Banking Corporation.¹ The Exemptions provide relief for the operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (the Plans) of certificates or debt instruments that are issued by such trusts with respect to which one of the Applicants is the lead underwriter or a co-managing underwriter. If granted, this proposed amendment would permit the trustee of the trust to be an affiliate of the underwriter. If adopted, the proposed amendment would affect the participants and beneficiaries of the Plans participating

¹ The notice of proposed exemption for PTE 90-23 was published on February 20, 1990 at 55 FR 5906; the notice of proposed exemption for PTE 90-31 was published on February 21, 1990 at 55 FR 6074; and the notice of proposed exemption for PTE 90-33 was published on February 21, 1990 at 55 FR 6082.

in such transactions and the fiduciaries with respect to such Plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before 45 days from the date of the publication in the **Federal Register** of this notice of proposed amendment.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: Application No. D-11041; Proposal to Amend Certain Individual Exemptions for J.P. Morgan Chase & Co. and its Affiliates). Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "moffittb@pwba.dol.gov" or by FAX to (202) 219-0204 by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein (Application No. D-11041) and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693-8546. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment that would modify the Exemptions. The Exemptions provide relief from certain prohibited transaction restrictions of sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act), as amended, and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, the Exemptions are three of the individual exemptions commonly known as the "underwriter exemptions," all of which are essentially identical to the original underwriter exemptions issued by the Department in 1989 to permit Plans to invest in pass-through certificates representing undivided interests in certain categories of investment trusts, if certain conditions are met. All of the underwriter exemptions, including the

Exemptions, were subsequently amended by Prohibited Transaction Exemption 97-34 (PTE 97-34, 62 FR 39021, July 21, 1997) and by Prohibited Transaction Exemption 2000-58 (PTE 2000-58, 65 FR 67765, November 13, 2000).

The proposed amendment has been requested in an application filed on behalf of J.P. Morgan Chase & Company and its Affiliates, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is issued solely by the Department.

In their current form, the Exemptions permit employee benefit plans to purchase certain securities representing interests in asset- or mortgage-backed investment pools for which one of the Applicants is the lead underwriter or a co-managing underwriter. The securities generally take the form of certificates issued by a trust (the Trust). The Exemptions permit transactions involving a Trust (including the servicing, management and operation of the Trust) and certificates evidencing interests therein (including the sale, exchange or transfer of certificates in the initial issuance of the certificates or in the secondary market for such certificates). The entities covered include the sponsor of the Trust as well as the underwriter for the certificates issued by the Trust when the sponsor, servicer, trustee or insurer of the Trust, the underwriter of the certificates issued by the Trust, or an obligor of the receivables contained in the Trust, is a party in interest with respect to an investing plan.²

One of the requirements of the Exemptions (as amended by PTE 2000-58) is that the trustee of the Trust not be an affiliate of any member of what the Exemptions define as the "Restricted Group"; i.e., in addition to the trustee, each underwriter, each servicer, each insurer, the sponsor, any more than 5% obligor with respect to receivables included in the Trust, each counterparty in an Eligible Swap Agreement, and any affiliate of such

persons. This restriction is common to all of the underwriter exemptions.

The Applicants represent that, while the provision requiring an independent trustee was not a major issue in 1989, developments in the banking industry over the past twelve years have caused the requirement to become onerous and disadvantageous to investors, including Plans. As the banking industry has consolidated, the number of banks participating in the corporate trust business has shrunk dramatically. This trend has been due to a number of factors which have made participation in the trust business less attractive to banks. On the income side, these factors include competitive pressure on pricing corporate trust services and loss of transactional fees and traditional float income due to the growth in book entry securities. On the expense side, the cost of entry into the corporate trust business and the cost of remaining in the business have increased dramatically.

This increase includes both technological and personnel costs. The cost increase is particularly acute in the structured finance sector of the corporate trust business, where both systems and staff need to have the capability of supporting increasingly complex transactions. The Applicants represent that the changes in the securities underwriting business are equally significant. These include the increased participation by banks and bank affiliates, and consolidation within the industry. As of the calendar year 2000, four of the top ten underwriters for structured finance transactions had affiliated corporate trust businesses. Eight of the top ten trustees, a group with a combined market share of over 76 percent in 2000, were affiliates of underwriters active in the structured finance sector. The trend in the market to broadly syndicate underwriting exacerbates the problem: the underwriter exemptions, including the Exemptions, prohibit affiliation not only between the trustee and the lead underwriter, but between the trustee and any underwriter, without regard to the amount underwritten.

The Applicants state that currently most providers of corporate trust and related services in the structured finance marketplace are large banks that have the requisite staff and systems resources to efficiently serve this marketplace. Most of these same banks, particularly those that are profitable and well-capitalized, have expanded into the securities underwriting business, including underwriting of structured finance transactions. Not only will investors (including Plans) be disadvantaged if banks and their

² Interested persons should review the Department's regulations at 29 CFR 2510.3-101 (Definition of "plan assets"—plan investments) for the reasons why a Plan's investment in certificates issued by a Trust may raise prohibited transaction issues with respect to parties in interest.

affiliates which underwrite securities continue to be precluded from providing trust services, but further, it is clearly not in the best interest of investors, including Plan investors, to eliminate those banks—often the most competent in the servicing of structured finance transactions—from the pool of available corporate trust providers.

A trustee in a structured finance transaction, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements so that the intent of the crafters of the transaction may be carried out. These functions are essentially ministerial, such as establishing accounts, receiving funds, making payments and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, there is no need for trustees in structured finance transactions to assume discretionary functions in order to protect the interests of debt holders in the event of default or bankruptcy, because structured finance entities are bankruptcy remote vehicles. There is no “issuer” outside the structured transaction to pursue for repayment of the debt. The trustee’s role is defined by a contract, which provides an explicit structure spelling out the action to be taken upon the happening of specified events. There is no opportunity or incentive for the trustee in a structured finance transaction, by reason of its affiliation with an underwriter or otherwise, to take or not to take actions which might benefit the underwriter to the detriment of Plan investors. The Applicants represent that the role of the underwriter in a structured financing involves, among other things, assisting the sponsor or originator in structuring the contemplated transaction. The trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential trustee liability. After the issuance of securities to the public, in a structured financing, while the trustee performs its role as trustee over the life of the transaction, the underwriter has no further role in the transaction. The trustee has no opportunity to take or not take action, or to use information in ways which might advantage the underwriter to the detriment of Plan investors. In fact, from the point of view of enhancing its reputation, the underwriter clearly wants the transaction to succeed as it

was structured, which includes the trustee performing in a manner independent of the underwriter. Accordingly, the Applicants have requested this modification to the Exemptions to permit the trustee of the Trust to be an affiliate of the underwriter.

In summary, the Applicants represent that the proposed modification of the Exemptions satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The amendment will benefit Plans by ensuring that the most capable corporate trustees will continue in the corporate trust business; (b) the amendment will not be harmful to Plans because the affiliation of the trustee to an underwriter will not cause any benefit to the underwriter to the detriment of any Plan investor; and (c) the safeguards provided by the Exemptions will not otherwise be altered.

Notice to Interested Persons

The Applicants believe that the market for the securities described in their application is so broad, and the number of potentially affected Plans is so large, that notice by mailing is impracticable and inadequate. Thus, publication of this Notice in the **Federal Register** is the only practical means of providing notice to interested persons. Written comments and hearing requests are due within 45 days of the publication of the Notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption can be granted under section 408(a) of the Act

and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notices of proposed exemption relating to the Exemptions, as modified by this Notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify PTE 90–23, PTE 90–31 and PTE 90–33, each as subsequently amended by PTE 97–34 and PTE 2000–58, as set forth below:

The first sentence of section II.A.(4) of the Exemptions is amended to read: “The trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter.”

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of

the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Exemptions, refer to the proposed exemptions and the grant notices that are cited above.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan L. Strasfeld,

*Director of Exemption, Determinations,
Pension and Welfare Benefits,
Administration, U.S. Department of Labor.*
[FR Doc. 02-1364 Filed 1-17-02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

BUREAU OF LAND MANAGEMENT

DEPARTMENT OF TRANSPORTATION

SURFACE TRANSPORTATION BOARD

[Docket No. 72-22]

Notice of Availability of Final Environmental Impact Statement for the Proposed Private Fuel Storage, L.L.C.; Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, UT

AGENCY: Nuclear Regulatory Commission; Bureau of Indian Affairs, Interior; Bureau of Land Management, Interior; Surface Transportation Board, Transportation.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB), has published a Final Environmental Impact Statement (FEIS), "Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related

Transportation Facility in Tooele County, Utah" NUREG-1714, January 2002, regarding the proposal of Private Fuel Storage, L.L.C. (PFS) to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians and construct and operate a new rail line and rail siding.

The Reservation is located approximately 44 km (27 miles) west-southwest of Tooele, Utah. PFS intends to transport spent nuclear fuel (SNF) by rail from commercial power reactor sites to an existing rail line north of Skull Valley. To transport the SNF from the existing rail line to the proposed facility, PFS proposes the construction and operation of a new rail siding and rail line on public land administered by BLM. This FEIS discusses the purpose and need for the PFS proposal and describes the proposed action and its reasonable alternatives, including the No-action Alternative. The FEIS also discusses the environment potentially affected by the proposal, presents and compares the potential environmental impacts resulting from the proposed action and its alternatives, and identifies mitigation measures that could eliminate or lessen the potential environmental impacts.

The PFS proposal requires approval from four federal agencies: NRC, BIA, BLM, and STB. The environmental issues that each of these agencies must evaluate pursuant to the National Environmental Policy Act of 1969 (NEPA) are interrelated. Therefore, the agencies have cooperated in the preparation of this FEIS, and this document serves to satisfy each agency's statutory responsibilities under NEPA.

Based on the evaluation in this FEIS, the NRC, BIA, BLM, and STB environmental review staffs have concluded that (1) the measures required by Federal, State, and Tribal permitting authorities other than the Cooperating Agencies and (2) the mitigation measures that the Cooperating Agencies propose be required would reduce any short- or long-term adverse environmental impacts associated with the proposed action (i.e., construction and operation of the proposed ISFSI and rail line) to acceptable levels. This FEIS reflects the final analysis of the environmental impacts of the PFS proposal and its alternatives including the consideration of public comments received by the NRC. In addition, the FEIS provides summaries of the substantive public comments received within the time allotted for public comment on the draft EIS, and responses, as appropriate, to such comments.

ADDRESSES: The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The FEIS and its appendices may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov. The FEIS is also available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. Upon written request and to the extent supplies are available, a single copy of the FEIS can be obtained for a fee by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by E-mail (DISTRIBUTION@nrc.gov); or by fax at (301) 415-2289.

FOR FURTHER INFORMATION CONTACT:

Chester Poslusny Jr., Sr. Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415-1341, or E-mail (CXP1@nrc.gov).

SUPPLEMENTARY INFORMATION: The proposed action involves the construction and operation of a proposed SNF storage facility at a site (known as Site A) located on the Reservation, and transporting SNF from the existing railroad to the site by constructing a new rail siding and rail line to connect the proposed facility to the existing main line in Utah. This FEIS has been prepared in compliance with NEPA, NRC regulations for implementing NEPA (10 CFR Part 51), guidance provided by the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508), STB regulations for implementing NEPA (49 CFR Part 1105), and BLM and BIA policy, procedures, and guidance documents.

Federal agencies' actions are considered in this FEIS. NRC's action is to grant or deny a 20-year license to PFS to receive, transfer, and possess SNF on the Reservation. BIA's action is to either approve or disapprove a 25-year lease between PFS and the Skull Valley Band for use of Reservation land to construct